IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.18343-CII of 2006 and
Civil Revision No.1220 of 2005

Date of Decision: 22.09.2006

Sham Sunder ...Petitioner

Vs.

Krishna Bawal ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Jitender Singla, Advocate,
for the petitioner.

Mr.S.K.Arora, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

CM No.18343-CII of 2006

For the reasons stated in the application the same is allowed and the order dated 11.9.2006 is recalled. The Civil Revision is restored to its original number.

Civil Revision No.1220 of 2005

The petitioner had summoned DW Lal Chand, a stamp vendor with record for the sale of stamp on 15.12.1998, 26.7.1999, 25.11.1999, 22.5.99, 4.6.99 and 8.2.99. The witness appeared in the court along with record and filed his affidavit on 18.3.2004. The case was thereafter, adjourned to 5.5.2004. Thereafter, it was on 18.5.2004 that application for recalling the witness was filed. Learned Trial Court rejected the said

application on the ground that the petitioner had been negligent to point out the fault at the first instance and also held that the stand of the petitioner that the affidavit was prepared and attested at Kotkapura and was brought on record stealthily was not believable.

Learned counsel for the petitioner vehemently contended that the witness had connived with the respondent-plaintiff and intentionally did not produce the record which was called for. It was further contended that the witness produced his affidavit by way of examination-in-chief without producing the record and that too in his absence. However, this contention that the petitioner was not present was not believed by the court by holding that counsel for both the parties were present when the witness was examined.

Learned counsel for the petitioner placed reliance on the judgment of this court in **Muthukaruppan @ Velayutham Vs. Suresh @ Muthukaruppan 2001 (1) RCR (Civil) 655** to contend that once the material questions are omitted to be asked to the witness then it is open to the court to recall a witness for further examination. He also placed reliance on the judgment of this court in **Om Parkash Vs. Sarupa & Ors. AIR 1981 Punjab and Haryana 157** to contend that as the important question could not be put to the witness as he was not present when the affidavit was submitted the court ought to have allowed the application for recalling the witness.

I have considered the authorities and find that they do not apply to the facts of the present case as in the present case the reason put forward by the petitioner for recalling the witness has been disbelieved by the Court.

On the other hand, learned counsel for the respondents placed reliance on the judgment of this Court in **Hindukhandan Mustraka Vs. Ram Sarup 2001 (4) RCR 638** to contend that recall of witness on the ground that he did not tell the truth when appeared earlier is no ground to recall the witness for further examination. He also placed reliance on the judgment of this court in the case of **Surjit Kaur and another Vs. Pritam Singh and others 2004 (1) RCR (Civil) 402** wherein in para No.10 it has been held as under:-

> "10. Under the provisions of Order 18 Rule 17 of the Code it is only the requirement of the Court that it may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the court thinks fit. The said language does not permit a party to re-examine any witness to fill up the lacuna in his case. The said provision is only with a view to enable the court to clear any doubts which may arise with regard to the earlier statement of the said witness."

The reading of provisions of Order 18 Rule 17 of the Code of Civil Procedure shows that the power to recall the witness is with the court and not with the parties.

In view of what has been stated above, there is no error in exercise of jurisdiction by the learned Trial Court which may call for interference by this Court in revisional jurisdiction.

Dismissed.

(Vinod K.Sharma)
Judge

22.09.2006
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